

CHAPTER 10

VOTER COMPLAINTS

The goal of this chapter is to provide information to county elections officials and the public concerning the filing of complaints against a state or local elections official, or another person or entity, alleging violations of Title III of HAVA.

Voter Complaints – Federal Requirements

Under HAVA, the state is required to establish administrative procedures to address complaints concerning violations of HAVA Title III requirements for uniform and nondiscriminatory election technology and administration. (HAVA Section 402(a)(1).) The procedures must be uniform and nondiscriminatory, and must allow any person who believes there is any violation of Title III – including a violation which has occurred, is occurring, or is about to occur – to file a complaint. The complaint must be in writing and notarized, and must be signed and sworn by the person filing the complaint. The complainant may request a hearing on the matter. If the state determines that there has been a violation of Title III, the state shall provide the appropriate remedy; if there is no violation, the complaint shall be dismissed. The state shall make a final determination within 90 days from the date of filing of the complaint, unless the complainant consents to a longer time period. (HAVA Section 402(a)(2).)

Voter Complaints – State Requirements

In June 2003, the Secretary of State adopted an administrative complaint procedure as required by section 402 of HAVA. The entire text of the complaint procedure can be accessed on the Secretary of State's website at <http://www.ss.ca.gov/elections/hava-complaint-procedure.htm>. The procedure incorporates all the HAVA requirements, and specifies additional procedures for filing the complaint, processing the complaint, and hearing and making a determination on the complaint, as more fully set forth below.

Form and Filing of Complaint

The Complaint Procedure specifies that, as required by HAVA, the complaint shall be in writing and notarized, and signed and sworn by the complainant. The complainant may use a form provided by the Secretary of State, or may use any other writing containing the information required by the form. Complaint forms in languages required pursuant to the Voting Rights Act (Spanish, Tagalog, Chinese, Japanese, Korean and Vietnamese) can be accessed on the Secretary of State's website at http://www.ss.ca.gov/elections/elections_fraud.htm. These complaint forms can also be used for filing complaints regarding non-HAVA, state law violations, such as voter fraud. Forms used to report complaints based on violations of state law do not need to be notarized.

The complainant must file the complaint within 60 days after the actions or events forming the basis for the complaint have occurred, or within 90 days after the complainant becomes aware of the actions or events, whichever is later. (HAVA Administrative Complaint Procedure, section 5.B.) The complaint must be sent to the Secretary of State, Elections Division, HAVA Complaint, 1500 11th Street, Sacramento, California 95814, or delivered in person to any office of the Secretary of State.

Processing the Complaint

The Complaint Procedure provides that the Secretary of State may consolidate complaints if they relate to the same actions or events, or if they raise common questions of law or fact. Prior to making a determination on the complaint, the Secretary of State must notify all respondents of the allegations made in the complaint. This requirement will not apply if the Secretary of State has reason to believe that notifying a respondent might compromise a criminal or other enforcement action by any other local, state, or federal agency. Similarly, when a complaint subsequently becomes the basis for litigation, the litigation may become the sole venue for resolution of that complaint.

The Secretary of State must compile and maintain an official record for each complaint filed. The official record shall contain:

- (a) A copy of the complaint, including any amendments;
- (b) A copy of any written submission by the Complainant;
- (c) A copy of any written response by any Respondent or other interested person;
- (d) A written report of any investigation conducted by agents of the Secretary of State or of any local elections official, who may not be directly involved in the actions or events complained of;
- (e) Copies of all notices and correspondence to or from the Secretary of State in connection with the complaint;
- (f) Originals or copies of any tangible evidence produced at any hearing conducted;
- (g) The original tape recording produced at any oral hearing conducted, and a copy of any transcript produced; and
- (h) A copy of any final determination made.

Hearing and Determination of the Complaint

If the complainant requests a hearing on the record, the Secretary of State shall conduct a hearing. The proceedings may be oral, at the discretion of the Secretary of State, but

shall otherwise be based on the writings and tangible evidence received by the parties. The hearing must be conducted no sooner than 10 days and no later than 60 days after the Secretary of State receives the complaint. The Secretary of State or his designee acts as the hearing officer.

The hearing officer will determine whether, under a preponderance of the evidence standard, a violation of Title III of HAVA has been established. If there has been a violation of Title III, the Secretary of State or his designee will provide an appropriate remedy, if a remedy is available. No remedy may involve the awarding of compensatory or punitive money damages to the complainant. If there has not been a violation, or if there is insufficient evidence of a violation, the complaint will be dismissed. The Secretary of State must explain the reasons for the determination and any remedy selected in a written decision, and the final determination is to be issued within 90 days after the complaint was filed, unless the complainant consents to an extension in writing.

Alternative Dispute Resolution

If, for any reason, the Secretary of State does not render a final determination on the complaint within 90 days, then on or before the fifth business day after the final determination was due, the Secretary of State shall designate in writing a neutral hearing officer. This hearing officer may review the record compiled in connection with the complaint, but need not take additional testimony or evidence. The officer will then determine the appropriate resolution of the complaint. No resolution may involve the awarding of compensatory or punitive money damages to the complainant. The officer must issue a written decision within 60 days after the final Secretary of State determination was due, and this time may not be extended without the express consent of the complainant.